

PAGES 1 - 33

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK

PLANNED PARENTHOOD FEDERATION OF  
AMERICA, INC., ET AL.,

PLAINTIFFS,

VS.

CENTER FOR MEDICAL PROGRESS,  
ET AL.,

DEFENDANTS.

NO. 16-CV-0236 WHO

NATIONAL ABORTION FEDERATION  
(NAF),

PLAINTIFF,

VS.

THE CENTER FOR MEDICAL PROGRESS;  
BIOMAX PROCUREMENT SERVICES, LLC;  
DAVID DALEIDEN (AKA "ROBERT  
SARKIS"; AND TROY NEWMAN,

DEFENDANTS.

NO. 15-CV-3522 WHO

SAN FRANCISCO, CALIFORNIA  
TUESDAY, JULY 17, 2018

**TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND**

**RECORDING 2:16 P.M. - 3:00 P.M.**

**TRANSCRIBED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR  
RETIRED OFFICIAL COURT REPORTER, USDC**

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1 TUESDAY, JULY 17, 2018

2:16 P.M.

2 (TRANSCRIBER'S NOTE: DUE AT TIMES TO COUNSELS' FAILURE TO  
3 IDENTIFY THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER  
4 ATTRIBUTIONS ARE BASED ON EDUCATED GUESS.)

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6 PROCEEDINGS

7 **THE CLERK:** CALLING CIVIL MATTERS 15-3522 AND 16-236,  
8 NATIONAL ABORTION FEDERATION VERSUS CENTER FOR MEDICAL  
9 PROGRESS, ET AL., AND PLANNED PARENTHOOD FEDERATION OF AMERICA,  
10 INCORPORATED, VERSUS CENTER FOR MEDICAL PROGRESS, ET AL.

11 COUNSEL, PLEASE COME FORWARD AND STATE YOUR  
12 APPEARANCE.

13 **MS. MALTZER:** GOOD MORNING, YOUR HONOR. DIANA  
14 MALTZER OF MORRISON FOERSTER ON BEHALF OF PLAINTIFFS. WITH ME  
15 IS MR. FORAN, DEREK FORAN, AND CHRISTOPHER ROBINSON.

16 **THE COURT:** GREAT. WELCOME.

17 **MR. JONNA:** GOOD AFTERNOON, YOUR HONOR. PAUL JONNA  
18 ON BEHALF OF DEFENDANTS DALEIDEN, CMP, AND BIOMAX, AND IN THE  
19 PLANNED PARENTHOOD CASE I ALSO REPRESENT DEFENDANT ADRIAN  
20 LOPEZ.

21 **THE COURT:** GREAT.

22 **MS. BOMSE:** GOOD AFTERNOON, YOUR HONOR. AMY BOMSE ON  
23 BEHALF OF PLANNED PARENTHOOD. AND WITH ME IS DIANA STERK OF MY  
24 OFFICE AND ALSO BETH PARKER OF PLANNED PARENTHOOD NORTHERN  
25 CALIFORNIA.

1           **THE COURT:** WELCOME.

2           **MR. JONNA:** COUNSEL PRESENT ALSO INCLUDE KATIE SHORT  
3 ON BEHALF OF ALBIN RHOMBERG; MIKE MILLEN ON BEHALF OF ALBIN  
4 RHOMBERG; JEFFREY TRISSELL ON BEHALF OF THE SAME CLIENTS I  
5 REPRESENT; MATT HEFFRON ON BEHALF OF DEFENDANT DAVID DALEIDEN;  
6 HARRY MIHET ON BEHALF OF DEFENDANT SUSAN MERRITT; AND VLADIMER  
7 KOZINA ON BEHALF OF DEFENDANT TROY NEWMAN.

8           **THE COURT:** WELL DONE. WELCOME.

9           **MR. JONNA:** THANK YOU.

10          **THE COURT:** ALL RIGHT. SO THERE ARE A NUMBER OF  
11 DIFFERENT ISSUES THAT THESE -- THAT THE CASE MANAGEMENT  
12 STATEMENTS RAISE, AND I THINK I'LL START WITH THE PLANNED  
13 PARENTHOOD CASE.

14               AND IT SEEMS TO ME THAT THERE ARE OBVIOUSLY STILL  
15 DISCOVERY BATTLES THAT ARE ONGOING WITH JUDGE RYU. I DO WANT  
16 TO SET A TRIAL SCHEDULE TO GET THIS CASE MOVING TOWARDS  
17 RESOLUTION. AND SO I HAVE A SOMEWHAT MODIFIED SCHEDULE THAT  
18 I'M GOING TO SUGGEST AND -- BUT RECOGNIZE THAT, GIVEN THE  
19 ISSUES THAT ARE BEFORE JUDGE RYU, THIS COULD -- THIS IS ALL  
20 SUBJECT TO SOME CHANGE.

21               BUT WHAT I'M THINKING IS THAT WE SET TRIAL FOR  
22 SEPTEMBER 30TH OF 2019, AND SO THEN I'M GOING TO FLIP THAT AND  
23 WORK FORWARDS. I WOULD HAVE A WRITTEN DISCOVERY CUTOFF AT THE  
24 END OF THE YEAR, SO DECEMBER 31ST; EXPERT DISCLOSURES AND THE  
25 FACT DISCOVERY CUTOFF FOR FEBRUARY 28TH; AND THEN EXPERT

1 REBUTTAL ON MARCH 28TH; EXPERT CUTOFF, APRIL 15TH; THEN JUST  
2 DISPOSITIVE MOTIONS FILED MAY 1, CULMINATING IN THE MOTIONS  
3 BEING HEARD ON JUNE 26TH; AND A PRETRIAL CONFERENCE ON  
4 SEPTEMBER 9TH.

5 SO LET'S START WITH THE -- WITH THE NOTION OF SETTING  
6 THE TRIAL AND ANYTHING THAT YOU WANT TO TELL ME ABOUT WHY THIS  
7 WORKS OR DOESN'T WORK FROM THE DEFENDANT'S PERSPECTIVE.

8 **MR. JONNA:** SURE. FROM THE DEFENDANT'S PERSPECTIVE,  
9 YOUR HONOR, I THINK IT IS PREMATURE TO SET A TRIAL. THE  
10 PRIMARY CONCERN IS -- WELL, THERE'S A NUMBER OF CONCERNS. THE  
11 FIRST CONCERN IS THE -- THE MANDATE HAS NOT ISSUED FROM THE  
12 ANTI-SLAPP APPEAL. IT'S OUR POSITION THAT DEPOSITIONS SHOULD  
13 BE STAYED UNTIL THAT MANDATE IS ISSUED, AND SO THE PRELIMINARY  
14 CONCERN IS JUST UNDERSTANDING WHETHER DEPOSITIONS ARE  
15 PROCEEDING WITH THE SCHEDULE.

16 **THE COURT:** SO THE -- MY IDEA WAS THAT THEY WOULD NOT  
17 PROCEED BEFORE THE END OF THE YEAR, AND I PROBABLY DIDN'T SAY  
18 THIS YET, THAT WE'D SET -- WE'D SET ANOTHER CASE MANAGEMENT  
19 CONFERENCE ON DECEMBER 11TH. SO BY THAT TIME WE SHOULD HAVE  
20 A -- WE SHOULD KNOW WHAT'S HAPPENED AS FAR AS THE OTHER  
21 DISCOVERY ISSUES. I UNDERSTAND THE ISSUE ON THE ANTI-SLAPP  
22 MOTIONS, ALTHOUGH IT SEEMS THAT THE ISSUE THE NINTH CIRCUIT IS  
23 INTERESTED IN MAY NOT -- IS -- MAY NOT AFFECT THE SORT OF  
24 OUTCOME AS IT RELATES TO US AS OPPOSED TO THE PROCEDURAL ISSUE  
25 OR THE ISSUE OF WHETHER THE STATE LAW IS GOING TO APPLY AT ALL

1 IN THE NINTH CIRCUIT, BUT -- BUT WE CAN LOOK AT THAT AGAIN ON  
2 DECEMBER 11TH.

3 **MR. JONNA:** SO JUST TO BE CLEAR, THE DEPOSITIONS  
4 WOULD BE STAYED UNTIL THE END OF THE YEAR?

5 **THE COURT:** UNTIL 2019, UNTIL JANUARY 1ST OF 2019.

6 **MR. JONNA:** OKAY.

7 **THE COURT:** WHAT I'M HOPING IS THAT ALL OF THE  
8 WRITTEN DISCOVERY ISSUES WILL HAVE BEEN WORKED THROUGH BY THEN.

9 **MR. JONNA:** I THINK THAT MIGHT BE WORKABLE, BUT I,  
10 YOU KNOW, NEED TO CONFER WITH CO-COUNSEL, BUT I THINK THAT  
11 MIGHT BE WORKABLE FROM OUR PERSPECTIVE.

12 **THE COURT:** OKAY. MS. BOMSE, WHAT DO YOU THINK?

13 **MS. BOMSE:** WELL, FIRST OF ALL, I JUST HAVE TO ASK A  
14 CLARIFYING QUESTION. IF DEPOSITIONS DON'T START UNTIL THE  
15 FIRST OF NEXT YEAR, WHEN IS THE END OF FACT DISCOVERY?

16 **THE COURT:** THE END OF FEBRUARY, SO TWO MONTHS.

17 **MS. BOMSE:** THAT'S PRETTY -- OKAY. SO HERE ARE MY  
18 THOUGHTS ON THAT. FIRST OF ALL, THERE'S ONLY ONE MOTION IN  
19 FRONT OF JUDGE RYU. SO THERE AREN'T MULTIPLE ISSUES; THERE'S  
20 ONE ISSUE.

21 WE DON'T THINK THERE ARE NEARLY AS MANY OUTSTANDING  
22 WRITTEN DISCOVERY ISSUES. WE THINK THE MORE TIME THERE IS, THE  
23 MORE TIME THERE IS TO CREATE NEW WRITTEN DISCOVERY ISSUES, AND  
24 SO I WOULD -- IT WOULD BE PLAINTIFF'S PREFERENCE TO SEE AN  
25 EARLIER WRITTEN DISCOVERY CUTOFF, OR, IF NOT THAT, SOME

1 MECHANISM BY WHICH THE INCOMING DISCOVERY FROM THE DEFENSE SIDE  
2 COULD BE CONTROLLED, YOUR HONOR.

3 I MEAN, WE ARE -- WE ARE UP TO THE TWO HUNDREDS IN  
4 REQUESTS FOR PRODUCTION THAT ARE -- THEY'RE DUPLICATIVE.  
5 THEY'RE CAUSING US TO GO BACK, OKAY, LET'S SEE, YOU KNOW,  
6 DEFENDANT RHOMBERG IS ASKING THIS QUESTION, DIDN'T DEFENDANT  
7 DALEIDEN ASK THIS 18 MONTHS AGO. OKAY? SO IT'S BECOMING  
8 EXTREMELY BURDENSOME. I UNDERSTAND THIS COURT HAS REFERRED  
9 DISCOVERY ISSUES TO JUDGE RYU, WISELY, SO -- BUT I'M RAISING  
10 THAT BECAUSE OF THE PROBLEM OF PROVIDING ANOTHER SIX MONTHS FOR  
11 THIS KIND OF BEHAVIOR TO GO ON.

12 WITH RESPECT TO THE MANDATE AND DEPOSITIONS BEING  
13 STAYED UNTIL THE END OF THE YEAR, AGAIN, IT'S MY VIEW THAT MOST  
14 OF THE DOCUMENTS HAVE BEEN PRODUCED. WE PROVIDED IN THE CMC  
15 STATEMENT WHAT, IN OUR VIEW, THE LIMITED QUANTITY OF ADDITIONAL  
16 DOCUMENTS THOSE NEED TO BE. THOSE CAN BE PRODUCED IN THE NEXT  
17 COUPLE OF MONTHS. I'M NOT SURE WHAT THE RATIONALE IS FOR  
18 SQUEEZING ALL OF THE DEPOSITIONS INTO A SHORT PERIOD OF TIME AS  
19 THAT SCHEDULE PROVIDES.

20 HOWEVER, HAVING SAID ALL THAT, I LIKE THE TRIAL DATE.  
21 AND IF THAT'S THE COURT'S PREFERENCE, HAVING LOOKED AT  
22 EVERYTHING, WE OBVIOUSLY WILL WORK WITH THAT.

23 **THE COURT:** ALL RIGHT. WELL, IT IS THE COURT'S  
24 PREFERENCE. AND IF THERE'S A PROBLEM WITH DISCOVERY,  
25 DUPLICATIVE DISCOVERY OR ANYTHING LIKE THAT, PUT IT TO JUDGE



1 RYU.

2 AND, I MEAN, AS THE LAST GROUP SAID, I USUALLY KEEP  
3 MY OWN DISCOVERY. I DIDN'T KEEP THIS BECAUSE I HAD THE  
4 WILLIAMS TRIAL AMONG -- AMONG OTHER MOTIONS, AND I'VE BEEN  
5 GRATEFUL THAT JUDGE RYU HAS BEEN HANDLING THAT, AND I'LL LOOK  
6 FORWARD TO HER RESPONSES TO ANY MOTIONS THAT YOU MAKE.

7 **MR. JONNA:** CAN I BRIEFLY RESPOND, YOUR HONOR?

8 **THE COURT:** YES.

9 **MR. JONNA:** JUST FOR THE RECORD, THERE ARE ACTUALLY A  
10 NUMBER OF KEY DISCOVERY ISSUES THAT REMAIN TO BE RESOLVED, FROM  
11 THE DEFENDANTS' PERSPECTIVE. SO ALTHOUGH PLAINTIFF'S ISSUES  
12 HAVE BEEN LARGELY RESOLVED, DEFENDANTS' HAVE NOT.

13 AND THE CORE DOCUMENTS THAT THE DEFENDANTS ARE  
14 SEEKING, WE HAVE BEEN TRYING TO WORK IN GOOD FAITH TO MEET AND  
15 CONFER, BUT WE STILL HAVEN'T RECEIVED THEM.

16 SO THE OTHER THING I WANT TO POINT OUT, YOUR HONOR,  
17 IS I DO THINK THAT THE SCHEDULE IS A LITTLE CRAMMED IN TERMS OF  
18 DEPOSITIONS. THEY START AT THE END OF THE YEAR -- OR THE  
19 BEGINNING OF NEXT YEAR, I SHOULD SAY. DISCOVERY CUTOFF WOULD  
20 BE FEBRUARY --

21 **THE COURT:** TWENTY-EIGHTH.

22 **MR. JONNA:** FEBRUARY 1ST -- WAIT.

23 **THE COURT:** FEBRUARY 28TH --

24 **MR. JONNA:** TWENTY-EIGHTH.

25 **THE COURT:** -- WAS WHAT I MEANT TO SAY. SO TWO

1 MONTHS.

2 **MR. JONNA:** OKAY. IS THERE ANY -- CAN WE EXPAND THAT  
3 A LITTLE BIT? I MEAN, THERE'S GOING TO BE A NUMBER OF  
4 DEPOSITIONS.

5 **THE COURT:** IF -- I'M HAPPY FOR YOU TO AGREE ON  
6 ANY -- IF THIS -- I DON'T KNOW HOW MANY DEPOSITIONS YOU'RE  
7 GOING TO HAVE BUT IF IT SEEMS TOO CRAMPED AND YOU CAN AGREE TO  
8 EXTEND IT A MONTH -- THE DATES THAT I CARE ABOUT ARE THE DATE  
9 FOR -- THE TRIAL DATE, THE PRETRIAL CONFERENCE DATE, AND THE  
10 DISPOSITIVE MOTION HEARING DATE.

11 IF YOU WANT TO AGREE TO A DIFFERENT SCHEDULE -- I'VE  
12 GIVEN YOU A LENGTHY SCHEDULE FROM THE TIME OF FILING THE  
13 MOTIONS TO REPLYING TO THEM. THAT'S THE WAY THAT THEY WERE  
14 PROPOSED BY THE PLAINTIFFS. IF YOU WANT TO SHORTEN THAT OR DO  
15 ANYTHING ELSE, I'M FINE BY THAT.

16 **MR. JONNA:** OKAY.

17 **MS. BOMSE:** AND IF WE CAN AGREE TO START DEPOSITIONS  
18 EARLIER, IS THE COURT FINE WITH THAT?

19 **THE COURT:** IT DOESN'T LOOK LIKE YOU'RE GOING TO, BUT  
20 YES, ABSOLUTELY. ANYTHING YOU WANT TO AGREE ON WITH RESPECT TO  
21 DISCOVERY IS FINE BY ME AS LONG AS IT DOESN'T IMPACT THE DATES  
22 THAT I CARE ABOUT.

23 **MS. BOMSE:** OKAY.

24 **THE COURT:** ALL RIGHT?

25 **MS. BOMSE:** THANK YOU, YOUR HONOR.

1           **MR. JONNA:**   THANK YOU.

2           **THE COURT:**   SO THAT -- I THINK THOSE WERE THE ISSUES  
3   THAT I WANTED TO DEAL WITH IN THE PLANNED PARENTHOOD CASE.   SO  
4   LET'S MOVE ON TO NAF.

5           SO, REMIND ME.   I WAS GOING BACK THROUGH THE  
6   DOCKET -- MS. SHORT PROBABLY REMEMBERS THIS OFF THE TOP OF HER  
7   HEAD, BUT IS THERE A -- DID WE PUT A STAY INTO EFFECT ON THE  
8   PLEADINGS RIGHT AT THE BEGINNING?

9           **MR. JONNA:**   YEAH, MY UNDERSTANDING IS -- WHEN YOU SAY  
10   "THE PLEADINGS," YOU MEAN IN TERMS OF FILING A RESPONSE?

11          **THE COURT:**   YES, FILING A RESPONSIVE --

12          **MR. JONNA:**   MY UNDERSTANDING IS THAT, YES, THERE WAS  
13   A STAY IN EFFECT, AND AFTER THE APPEAL WAS RESOLVED, THE  
14   PARTIES WERE TO MEET AND CONFER.   AND NAF WOULD LET US KNOW IF  
15   THEY'RE GOING TO AMEND THE COMPLAINT, THEN WE WERE PRESERVING  
16   OUR RIGHT TO FILE AN ANTI-SLAPP MOTION.

17          **THE COURT:**   SO -- AND THAT'S THE PLAINTIFF'S MEMORY  
18   ALSO?

19          **UNIDENTIFIED SPEAKER:**   YOUR HONOR, I APOLOGIZE.   I  
20   DON'T REMEMBER A STAY BEING PUT INTO EFFECT WITH RESPECT TO THE  
21   (INDISCERNIBLE) AT THE START OF THE CASE.   WE DID AGREE TO A  
22   STAY (INDISCERNIBLE) PROCEEDINGS PENDING THE OUTCOME OF THE  
23   PRELIMINARY INJUNCTION APPEAL.

24          **THE COURT:**   OKAY.   ALL RIGHT.   OKAY.   SO NOW WE GOT  
25   TO GET THIS GOING, AND I THINK THAT THE PLEADINGS NEED TO BE

1 SET BEFORE ANY MOTIONS FOR SUMMARY JUDGMENT ARE FILED SO THAT  
2 WE KNOW WHAT THE ISSUES ARE, AND, OTHERWISE, THE DEFENDANTS  
3 WOULD HAVE A VERY GOOD MOTION TO -- UNDER 56(D) .

4 SO I -- AND I ALSO SUSPECT THAT THERE'S BEEN  
5 SUBSTANTIAL OVERLAPPING DISCOVERY IN THE PLANNED PARENTHOOD  
6 CASE, WHICH SHOULD MAKE THIS A LITTLE EASIER. WHAT -- BESIDES  
7 THE DISCOVERY THAT YOU'RE DOING IN THE PLANNED PARENTHOOD CASE,  
8 IS THERE OTHER SPECIFIC DISCOVERY THAT YOU'LL BE LOOKING FOR IN  
9 NAF?

10 **MR. JONNA:** YES, YOUR HONOR. THERE'S A QUITE A BIT.  
11 SO I HAVEN'T MAPPED IT OUT YET, BUT WE WANT TO TAKE DISCOVERY  
12 ON ALL THE CLAIMS TO FULLY DEVELOP ALL OF OUR DEFENSES. SO  
13 THERE -- YOU KNOW, THERE'S SOME OVERLAP, BUT THERE'S QUITE A  
14 BIT OF DIFFERENT DISCOVERY THAT'S GOING TO BE NEEDED. I  
15 DON'T -- I'M NOT PREPARED TO IDENTIFY WHAT THAT DISCOVERY IS,  
16 BUT I CAN TELL YOU IT'S GOING TO BE A SIGNIFICANT AMOUNT OF  
17 DISCOVERY FROM OUR PERSPECTIVE.

18 **THE COURT:** OKAY. WELL, SO -- SO, I WANT YOU TO  
19 START SORTING THAT OUT SO THAT WE CAN MOVE THIS CASE.

20 SO HERE'S MY IDEA: I WOULD LIKE TO GET PLEADING  
21 MOTIONS ARGUED BY SEPTEMBER 26TH. SO HERE'S MY SUGGESTED  
22 CALENDAR FOR THAT: THAT THEY GET FILED BY AUGUST 15TH, THE  
23 OPPOSITION SEPTEMBER 5TH, THE REPLY SEPTEMBER 12TH, AND THEN  
24 WE'LL HAVE A HEARING ON SEPTEMBER 26TH.

25 **MS. MALTZER:** YOUR HONOR, DO YOU HAVE ANY FLEXIBILITY

1 WITH RESPECT TO THOSE DATES? WE HAVE AN ORAL ARGUMENT BEFORE  
2 THE NINTH CIRCUIT ON SEPTEMBER 14TH IN THIS MATTER AS WELL.

3 **THE COURT:** THAT WILL INTERFERE WITH BOTH OF YOUR  
4 PREPARATIONS.

5 **MR. JONNA:** WE WOULD APPRECIATE A LITTLE BIT MORE  
6 TIME AS WELL, SO...

7 **MS. MALTZER:** I'M BEING INFORMED BY MY PARTNER -- THE  
8 PARTNER THAT HE'S PERFECTLY CAPABLE OF DOING THIS. I BEG YOUR  
9 PARDON.

10 **THE COURT:** SO --

11 **MR. JONNA:** YOUR HONOR, WE -- THE DEFENDANTS -- THE  
12 DEFENDANTS WILL HAVE -- THAT'S GOING TO RUN INTO THE REPLY --  
13 DIRECTLY INTO THE REPLY PERIOD. ARE YOU TELLING ME THAT'S  
14 GOING TO BE A PROBLEM?

15 **MR. JONNA:** I THINK IT WILL, YOUR HONOR.

16 **THE COURT:** OKAY. THE REASON I WANT WANTED TO DO IT  
17 THEN IS BECAUSE -- AND I'M GOING TO HAVE A -- WHAT IF WE PUSH  
18 THE HEARING BACK A WEEK? AND THE ONLY REASON I'M BEING  
19 PARSIMONIOUS ON THAT IS THEN I'M GOING TO BE GONE FOR A FEW  
20 WEEKS, AND I'D REALLY LIKE TO GET THIS GOING. SO IF WE DID  
21 OCTOBER 3RD -- LET'S SEE, FILE BY THE 15TH, THEN I GIVE YOU --  
22 I'LL GIVE YOU TWO WEEKS FOR THE REPLY TO THE 19TH,  
23 SEPTEMBER 19TH. PLAINTIFFS ARE FINE WITH THIS, I KNOW, BECAUSE  
24 MR. FORAN SAID "GREAT."

25 **MS. MALTZER:** MR. FORAN CAN DO ANYTHING. SO LET'S DO

1 THAT, OKAY?

2 MR. JONNA: OKAY. THAT -- IF THE COURT -- IF THAT'S  
3 THE COURT'S PREFERENCE. I MEAN, WE WOULD OBVIOUSLY PREFER AS  
4 MUCH TIME AS POSSIBLE.

5 THE COURT: I UNDERSTAND, BUT THERE IS A -- IT LOOKS  
6 LIKE QUITE A DEEP BENCH THAT YOU HAVE, AND TWO WEEKS FOR A  
7 REPLY IS TWICE THE AMOUNT OF TIME THAT YOU WOULD NORMALLY HAVE.  
8 SO I THINK WE'LL LEAVE IT THERE. SO FILE WHATEVER MOTIONS, OR  
9 AN ANSWER IF YOU DECIDED TO DO THAT, BUT BY AUGUST 15TH,  
10 OPPOSITION SEPTEMBER 15TH, REPLY BY SEPTEMBER 19TH, AND WE'LL  
11 HAVE A HEARING ON OCTOBER 3RD.

12 MS. MALTZER: YOUR HONOR, IS IT MY UNDERSTANDING THAT  
13 YOU DO NOT WANT TO HEAR A SUMMARY JUDGMENT MOTION FROM US UNTIL  
14 AFTER IT'S BEEN --

15 THE COURT: EXACTLY. I THINK THE PLEADINGS NEED TO  
16 GET SET. WE NEED TO KNOW WHAT THE -- WHAT THE AFFIRMATIVE  
17 DEFENSES ARE GOING TO BE, AND THERE'S THEN GOT TO BE SOME  
18 ANALYSIS OF WHETHER THERE IS DISCOVERY THAT'S GOING TO BE  
19 REQUIRED BEFORE THE MOTION GETS HEARD ANYWAY, AND THE DEFENSE  
20 HAS ALREADY INDICATED THAT THEY THINK THAT THERE ARE THINGS  
21 THAT THEY NEED TO DO BEFORE RESPONDING ON THE MERITS. SO,  
22 WE'LL HAVE TO DEAL WITH THAT. SO THAT'S -- STEP ONE IS THIS  
23 PLEADING.

24 MS. MALTZER: OKAY.

25 THE COURT: STEP TWO IS THE DISCOVERY, AND WHAT I'D

1 LIKE THE DEFENDANTS TO DO IS IDENTIFY WHAT THE PROPORTIONATE  
2 AND NECESSARY DISCOVERY IS THAT THEY WANT THAT IS IN ADDITION  
3 TO WHAT'S ALREADY BEFORE -- IN THE PLANNED PARENTHOOD CASE --  
4 AND I'D LIKE YOU TO LAY THAT OUT IN WRITTEN FORM, LIKE A LETTER  
5 TO THE PLAINTIFFS BY AUGUST 1ST. I WANT PLAINTIFFS TO RESPOND  
6 BY AUGUST 15TH TO THAT, AGAIN AND IN LETTER FORM. THIS  
7 ISN'T --

8 **MS. MALTZER:** IS THIS YOUR FIVE-PAGE LETTER FORMAT,  
9 YOUR HONOR?

10 **THE COURT:** NO, THIS IS TO THE DEFENDANTS AT THE  
11 MOMENT. AND I'D LIKE YOU THEN TO SIT DOWN WITH EACH OTHER AND  
12 MEET AND CONFER BY AUGUST 29TH. AND THEN I'D LIKE TO SEE, IF  
13 YOU'RE UNABLE TO AGREE ON WHAT THE DISCOVERY IS THAT IS  
14 APPROPRIATE IN THIS CASE IN ADDITION TO WHAT'S ALREADY BEING  
15 DONE IN THE PLANNED PARENTHOOD CASE, SEND ME A JOINT LETTER BY  
16 SEPTEMBER 12TH. THEN I'LL DECIDE WHETHER I NEED TO REFER THIS  
17 ALL TO JUDGE RYU OR WHETHER I'M GOING TO DO IT MYSELF.

18 **MR. JONNA:** OKAY.

19 **THE COURT:** AND THEN WE'LL HAVE A -- WE'LL DO THE  
20 CMC, I THINK, IN THIS CASE ALSO ON DECEMBER 11TH. I WOULD LIKE  
21 NOTHING BETTER THAN TO COORDINATE THESE CASES IN A WAY RIGHT UP  
22 TO AND INCLUDING -- WELL, NOT INCLUDING THE TRIAL, BUT HAVING  
23 THEM JUST IN LOCKSTEP. I DON'T KNOW WHETHER THAT'S GOING TO BE  
24 POSSIBLE OR NOT. WE'LL JUST HAVE TO SEE HOW THINGS DEVELOP.  
25 OKAY.

1                   **MR. JONNA:**    OKAY.

2                   **MS. MALTZER:**   OKAY.    SO JUST -- I HAD HOPES OF A  
3 SUMMARY JUDGMENT MOTION SOONER THAN THAT.    SO JUST TO MAKE SURE  
4 THAT I UNDERSTAND WHAT YOUR HONOR IS DIRECTING, WE'RE NOT GOING  
5 TO BE HAVING SUMMARY JUDGMENT UNTIL FALL?

6                   **THE COURT:**   WELL, I THINK IT WILL REALLY DEPEND ON  
7 WHAT HAPPENS WITH THE PLEADING MOTION, NUMBER ONE.    YOU'LL NEED  
8 TO HAVE AN ANSWER ON FILE OR KNOW WHAT THE AFFIRMATIVE DEFENSES  
9 ARE BEFORE YOU FILE THE MOTION FOR SUMMARY JUDGMENT, BECAUSE  
10 THE -- WHAT I WOULD DO IF I WAS A DEFENDANT AND I HADN'T HAD A  
11 CHANCE TO DO DISCOVERY IS SAY, I NEED TO DO DISCOVERY.   AND I'M  
12 EXPECTING THAT.   AND IF YOU FILE YOUR MOTION FOR SUMMARY  
13 JUDGMENT, YOU WILL LAY OUT WHAT YOUR CASE IS, BUT THE  
14 DEFENDANTS WILL SAY, WE'RE GOING TO NEED SIX MONTHS, AND THEN  
15 THEY'LL FOCUS SPECIFICALLY ON ALL OF THOSE MATERIAL FACTS.

16                   YOU'LL BE IN A BETTER PLACE, AND SO WILL THE  
17 DEFENDANTS IF THIS DEVELOPS IN A NORMAL ORDER.    SO I WOULD  
18 WAIT.   THE SHORT ANSWER IS I WOULD WAIT.

19                   **MS. MALTZER:**   THANK YOU.   AND WE DO APPRECIATE THAT  
20 THE DEFENDANTS WILL BE ASKED TO LIST OUT THE DISCOVERY THAT  
21 THEY'RE LOOKING FOR.   WE HAVE NO -- WE JUST -- WE HAVE NO  
22 CLARITY ON THAT (INDISCERNIBLE).

23                   **THE COURT:**   RIGHT.   THAT'S THE PURPOSE OF MY LAYING  
24 THIS OUT.

25                   **MS. MALTZER:**   THANK YOU.



1           **THE COURT:**   OKAY.

2           **MS. MALTZER:**   AND THOUGHTS ON A STAY OF THE  
3   NON-BREACH OF CONTRACT CLAIMS THAT WE CAN REALLY FOCUS ON  
4   GETTING THE BREACH OF CONTRACT RESOLVED.   IF WE DO END UP  
5   MOVING FOR SUMMARY JUDGMENT AND WE WIN IT, WE'LL DISMISS THE  
6   OTHER CLAIMS WITH PREJUDICE.

7           **THE COURT:**   WELL, YOU CAN DISMISS ANY CLAIMS YOU WANT  
8   TO AT ANY TIME.   THAT'S ENTIRELY UP TO YOU.   IT'S PREMATURE FOR  
9   ME TO PUT A STAY ON ANYTHING.   THE DEFENDANTS HAVE THE RIGHT TO  
10   TRY TO KNOCK CLAIMS OUT.   YOU'VE PROPOSED ONE WAY TO EXPEDITE  
11   THE CASE.   I THINK THEY ARE GOING TO BE HOPING TO PRESENT A  
12   CASE THAT IS SOMEWHAT DIFFERENT, AND THEY'RE ENTITLED TO TAKE  
13   THAT SHOT TOO.   SO I THINK THAT'S WHERE WE ARE ON THAT.

14          **MS. MALTZER:**   THANK YOU.

15          **THE COURT:**   OKAY.   IS THERE ANYTHING ELSE THAT WE  
16   OUGHT TO DO TODAY ON EITHER OF THESE CASES?   YEAH.   I'M HAPPY  
17   TO HEAR FROM EVERYBODY.

18          **MR. MILLEN:**   THANK YOU, YOUR HONOR.   MICHAEL MILLEN.

19               THIS IS CALLING BACK TO PLANNED PARENTHOOD.   I WAS  
20   THINKING ABOUT YOUR -- THAT THIS CONCEPT OF FINISHING WRITTEN  
21   DISCOVERY BY THE END OF THIS YEAR, AND THE WAY THINGS LOOK FROM  
22   DOWN HERE IS VERY DIFFERENT PROBABLY THAN HOW IT FEELS FROM UP  
23   THERE.   AND AS KIND OF A BOOTS-ON-THE-GROUND PERSON THAT'S  
24   ACTUALLY LITIGATING THIS, THE TIMETABLE KIND OF LOOKS LIKE  
25   THIS:   WE SEND OUT A REQUEST FOR DISCOVERY.   THEY, BEING VERY

1 BUSY, NATURALLY REQUEST A CONTINUANCE, WHICH BOTH SIDES HAVE  
2 BEEN VERY GRACIOUS IN GRANTING. I DON'T THINK ANYBODY'S PUSHED  
3 OUT OF SHAPE ABOUT THIS. IT'S AN OPPRESSIVE BUSINESS.

4 THEN SOME INFORMAL MEET AND CONFERS HAPPEN, BECAUSE  
5 YOU CAN'T HAVE A FORMAL MEET AND CONFER, BECAUSE JUDGE RYU SAYS  
6 A FORMAL MEET AND CONFER TRIGGERS WHEN THE BRIEF IS DUE. SO  
7 YOU HAVE TO HAVE THESE INFORMAL MEET AND CONFERS; WELL, OKAY,  
8 WE'LL TALK AGAIN NEXT WEEK, BUT THAT'S WHERE WE ARE KIND OF AT.  
9 SO, FINALLY, OKAY, THIS IS THE MEET AND CONFER; I'M SORRY,  
10 COUNSEL. THEN WE HAVE A WEEK OR WHATEVER IT IS TO ACTUALLY GET  
11 THIS JOINT DEAL TOGETHER.

12 THEN JUDGE RYU GETS IT, AND SHE IS BUSY, BUT YOU  
13 PROBABLY KNEW THAT. AND SO AS AN EXAMPLE, WHAT WE HAVE COMING  
14 UP IN SHORTLY FOR HEARING, DAY AFTER TOMORROW, I THINK, I  
15 BELIEVE THAT WAS SUBMITTED ON MAY 1ST. SO, IN OTHER WORDS,  
16 THERE'S A 2-1/2 MONTH LAG FOR JUDGE RYU TO REVIEW IT.

17 AND THEN BEING, AT LEAST MY EXPERIENCE WITH HER, A  
18 THOUGHTFUL JURIST, SOMETIMES SHE SAYS, I NEED MORE TIME TO  
19 THINK ABOUT IT, CAN SOMEBODY BRIEF THIS ISSUE, I DON'T THINK  
20 YOU DID TOO WELL ON IT.

21 BOTTOM LINE 4-1/2 MONTHS, IT WOULD BE A MIRACLE, IF  
22 WE SENT OUT DISCOVERY TODAY, IF THERE'S ANY DISPUTE, FOR JUDGE  
23 RYU TO ISSUE ANY DECISION BEFORE THE END OF THE YEAR, GIVEN THE  
24 TIMETABLE THAT I'VE EXPERIENCED WITH THIS COURT.

25 SO I GUESS ALL I'M ASKING IS ON DECEMBER 11TH WHEN WE

1 COME BACK, MY INTENTION WOULD BE TO HAVE A LIST OF REASONS WHY  
2 THIS DOESN'T SEEM VERY DUE PROCESS-Y TO ME. I GUESS I JUST  
3 WANTED TO PUT THAT OUT FOR THE COURT. I MEAN, I DO HAVE ONE OF  
4 THE SOMEWHAT MINOR DEFENDANTS COMPARED TO SOME OF THE OTHER  
5 FOLKS THAT ARE MORE INVOLVED IN THIS, AND I GET THAT. BUT IT  
6 REALLY IS DIFFICULT BECAUSE OF THIS LONG PROCESS. AND I GET  
7 IT, DUE PROCESS TAKES TIME, I GET THAT, BUT --

8 **THE COURT:** SO MR. MILLEN, I APPRECIATE YOUR CONCERN,  
9 AND I DO -- AS OPPOSED TO THE FIRST PEOPLE WHO CAME IN HERE WHO  
10 JUST BLEW BY DEADLINES WITHOUT PAYING ANY ATTENTION TO THEM, I  
11 EXPECT THAT WHEN THE SCHEDULES THAT I'VE LAID OUT ARE NOT  
12 WORKING IN SOME WAY, THAT I'LL GET A LIST OF REASONS WHY IT  
13 DOESN'T -- IT'S NOT WORKING.

14 I EXPECT THAT IT'S GOING TO WORK. THAT'S MY -- I  
15 THINK I'VE GIVEN -- I GAVE A LOT MORE TIME, FOR EXAMPLE, THAN  
16 MS. BOMSE THINKS IS NECESSARY. I AM HOPEFUL THAT EVERYTHING IS  
17 GOING TO BE WORKED OUT BY THEN. IF IT'S NOT, WE'LL JUST HAVE  
18 TO LOOK AT THE SCHEDULE AND SEE HOW IT CAN BE REJIGGERED, BUT I  
19 APPRECIATE YOUR FORESHADOWING WHERE YOU THINK YOU'RE GOING TO  
20 BE.

21 **MR. MILLEN:** AND I'VE HEARD OF JUDICIAL ACTIVISM, BUT  
22 TODAY I'M HEARING JUDICIAL OPTIMISM, WHICH IS -- WE'LL DO OUR  
23 BEST, YOUR HONOR, BUT I REALLY THINK THAT'S AWFULLY OPTIMISTIC,  
24 BUT WE'LL SEE.

25 **THE COURT:** OKAY. I AM AN OPTIMISTIC PERSON, SO I'M

1 HOPEFUL THAT YOU ALL WILL WORK WELL TOGETHER AND GET THIS --  
2 GET THE DISCOVERY ISSUES RESOLVED, BECAUSE, IN MY MIND,  
3 DISCOVERY IS A COLLABORATIVE ENTERPRISE. IT'S NOT -- IT  
4 SHOULDN'T BE HAMMER AND TONGS ON THINGS. I IMAGINE THAT  
5 THERE'S BEEN MORE HAMMER AND TONGING THAN IN SOME OTHER CASES,  
6 BUT I'M HOPEFUL THAT EVERYBODY IS WORKING IN GOOD FAITH TO  
7 DELIVER THE DOCUMENTS THAT NEED TO BE DELIVERED.

8 **MR. MILLEN:** THANK YOU.

9 **THE COURT:** MS. SHORT?

10 **MS. SHORT:** THANK YOU, YOUR HONOR. I JUST WANTED TO  
11 ADDRESS -- UPDATE THE COURT ON ONE ISSUE THAT WE RAISED IN THE  
12 CMC, WHICH WE RAISED IT ABOUT TRYING TO GET A REASONABLE  
13 COLLABORATIVE APPROACH TO THE USE OF DOE IDENTIFIERS IN THAT WE  
14 KNOW DOZENS OF THESE PEOPLE AND THEIR NAMES. THEY'RE PUBLIC.  
15 AND WE HAVE ASKED PLAINTIFFS TO DESIST FROM USING THOSE IN  
16 DOCUMENTS BECAUSE THEY ARE MAKING MULTIPLE MISTAKES USING THEM,  
17 AND THAT SLOWS DOWN THE PROCESS. IT'S CONFUSING.

18 I MEAN, WE CAN SPOT MISTAKES. SO WE SPOT FOR THE  
19 SAME PERSONS BEING -- YOU KNOW, THE SAME NUMBERS BEING ASSIGNED  
20 TO DIFFERENT PEOPLE. HOW MANY ARE WE NOT SPOTTING?

21 AND SO I HAVE -- AND, UNFORTUNATELY, PLAINTIFFS DID  
22 REPORT BACK. I SAID AT THE TIME OF THE CMC THAT WE HAVE NOT  
23 HEARD FROM THEM YET. WE HAVE HEARD FROM THEM, AND THEY ARE  
24 STANDING ON YOUR ORDER THAT, BASICALLY, THE BARE MINIMUM, OR,  
25 YOU KNOW, BASICALLY, THEY WILL DO NOTHING OTHER THAN WHAT THIS

1 COURT SPECIFICALLY ORDERS, WHICH WAS CERTAIN PEOPLE -- CERTAIN  
2 PEOPLE'S NAMES BE USED AND OTHERS GET DOE IDENTIFIERS.

3 AND IT'S -- I GUESS I WOULD ASK THIS COURT IF YOU'RE  
4 WILLING TO SUGGEST TO THE PLAINTIFFS THAT TO BE A LITTLE MORE  
5 REASONABLE ABOUT THAT, AGAIN, WHEN THERE ARE NAMES THAT ARE  
6 KNOWN TO US, THAT ARE KNOWN TO THE WORLD, TO KEEP USING DOE  
7 IDENTIFIERS WHEN IT LEADS TO MISTAKES WHICH ARE GOING TO TRIP  
8 US UP, YOU KNOW, IT'S JUST POINTLESS. IT IS NOT SERVING ANY  
9 PURPOSE.

10 **THE COURT:** ALL RIGHT. MS. BOMSE?

11 **MS. BOMSE:** OKAY. SO, FIRST OF ALL, I ACTUALLY THINK  
12 THAT OUR FOLKS HAVE BEEN EXTRAORDINARILY CAREFUL IN ASSIGNING  
13 DOE IDENTIFIERS. DEFENDANTS HAVE IDENTIFIED MAYBE THREE  
14 MISTAKES, FOUR MISTAKES, NOT MANY. THIS IS A VERY COMPLICATED  
15 PROCESS AND OUR FOLKS ARE ASSIDUOUS.

16 THERE IS A HUGE DIFFERENCE IN OUR MINDS BETWEEN THOSE  
17 INDIVIDUALS WHO WORK FOR PLANNED PARENTHOOD WHO ARE KNOWN TO  
18 THE DEFENDANTS AND WHO ARE KNOWN TO THE WORLD. THIS COURT  
19 IDENTIFIED THAT AND CRAFTED THE ORDER SPECIFICALLY TO SAY THOSE  
20 PEOPLE WHO WORK FOR PLANNED PARENTHOOD WHO ARE KNOWN TO THE  
21 WORLD, SO JUST SPOKESPEOPLE AND EXECUTIVE STAFF, SHOULD NOT  
22 BE -- USE A DOE, AND WE'VE ABIDED BY THAT. THAT'S AN  
23 APPROPRIATE MECHANISM, BALANCING.

24 AND ONE ISSUE THAT ARISES WITH THIS PROPOSAL THAT THE  
25 DEFENDANTS ARE MAKING NOW, MULTIPLE YEARS INTO IT, IS THAT WE

1 WOULD -- A LOT OF THE PEOPLE THAT THEY ARE ASKING US NOT USE  
2 DOES FOR ARE -- ALREADY HAVE A DOE ASSIGNED TO THEM IN THE  
3 DOCUMENTS THAT WE'VE PRODUCED. SO WHAT WE WOULD HAVE TO DO, IF  
4 THE PROTECTIVE ORDER WAS MODIFIED RETROACTIVELY, IS GO BACK AND  
5 FIX THOSE, WHICH WOULD BE BURDENSOME.

6 AND, MOREOVER, I'VE CONSULTED WITH ALL OF MY CLIENTS  
7 ABOUT THIS LIST, AND THEY THOUGHT ABOUT IT FURTHER. I CAN  
8 ASSURE THE COURT WE ARE BEING REASONABLE. WE ARE NOT IMPOSING  
9 DIFFICULTY JUST FOR DIFFICULTY'S SAKE. AND THE INDIVIDUALS ON  
10 THOSE LISTS -- WE HAVE REMOVED DOES FOR PEOPLE LIKE  
11 MS. FARRELL, WHO WAS IDENTIFIED IN THE DEFENDANTS' VIDEOS,  
12 BECAUSE, IN OUR JUDGMENT, SHE UNWITTINGLY AND INVOLUNTARILY HAS  
13 BECOME A PUBLIC PERSON.

14 BUT AS A GENERAL MATTER, MY CLIENTS HAVE REVIEWED THE  
15 LIST THAT DEFENDANTS SENT US, AND THEIR VIEW IS MOST OF THE  
16 PEOPLE ON THOSE LISTS WHO STILL HAVE DOES, IT'S APPROPRIATE.

17 **THE COURT:** ALL RIGHT.

18 **MS. BOMSE:** SO WE'D ASK THE COURT TO MAKE NO CHANGE.

19 **THE COURT:** ALL RIGHT. AND SO THIS -- I CAN'T  
20 REMEMBER HOW LONG AGO IT WAS I ISSUED THAT ORDER, SO I'M GOING  
21 TO HAVE TO GO BACK AND TAKE A LOOK AT IT.

22 IS THE PROCESS -- SO THE PROCESS RIGHT NOW IS THAT  
23 IT'S ATTORNEYS' EYES ONLY, BASICALLY, FOR WHO THE DOES ARE, OR  
24 ARE THE DOES JUST DOES, OR WHAT'S THE --

25 **MS. SHORT:** YOUR HONOR, THESE DOCUMENTS ARE BEING

1 PRODUCED IN THE COURSE OF -- PLAINTIFFS HAVE VERY GENEROUSLY  
2 USED THE PROTECTIVE ORDER'S CONFIDENTIALITY AND AEO PROVISIONS  
3 SUCH THAT NO DOCUMENTS COMING OUT FROM PLANNED PARENTHOOD ARE  
4 DESIGNATED ANYTHING BUT CONFIDENTIAL OR AEO. THERE ARE NO  
5 NON-PUBLIC DOCUMENTS THAT THEY'RE WILLING TO DESIGNATE ANYTHING  
6 LESS THAN CONFIDENTIAL.

7 **THE COURT:** OKAY. WITH RESPECT TO THE DOES? OR  
8 THE --

9 **MS. SHORT:** NO, JUST THE ENTIRE DOCUMENTS.

10 **THE COURT:** NO, NO. I UNDERSTAND THAT.

11 SO -- BUT WITH RESPECT TO THE DOES, DO YOU KNOW  
12 THE -- DO YOU HAVE THE UNDERLYING IDENTITY OF THOSE PEOPLE, THE  
13 ATTORNEYS?

14 **MS. SHORT:** BECAUSE WE HAVE FIGURED IT OUT BECAUSE  
15 THESE ARE PUBLIC PEOPLE.

16 **THE COURT:** RIGHT. THERE'S NO OTHER LIST THAT'S  
17 BEEN --

18 **MS. SHORT:** NO. AND I WOULD ADD, YOUR HONOR, IN  
19 TERMS OF THE BURDEN OF GOING BACK AND DOING THIS, PLAINTIFFS  
20 HAVE ALREADY BEEN ORDERED BY JUDGE RYU TO GO BACK AND REPRODUCE  
21 DOCUMENTS, BECAUSE THEY TOOK YOUR ORDER AND THEN WENT FURTHER,  
22 AND THEY DECIDED WE ARE -- WELL, WE'RE ONLY GOING TO ASSIGN DOE  
23 IDENTIFIERS TO CERTAIN PEOPLE, AND THE REST OF THE NAMES WE  
24 WILL SIMPLY REDACT. SO WE HAVE THOUSANDS AND THOUSANDS OF  
25 PAGES OF NAMES REDACTED WITHOUT A DOE IDENTIFIER.

1 AND SO JUDGE RYU JUST LAST MONTH ORDERED THE  
2 PLAINTIFFS TO GO BACK AND FILL IN DOE IDENTIFIERS FOR THOSE  
3 PEOPLE. SO THEY'RE GOING TO HAVE -- THEY'RE IN THE PROCESS OF  
4 REVIEWING ALL THESE DOCUMENTS ANYWAY. SO REMOVING NEEDLESS DOE  
5 IDENTIFIERS OVER NAMES WOULD BE -- COULD BE PART OF THAT  
6 PROCESS.

7 AND IN TERMS OF THE ASSIDUOUSNESS, I MEAN, I CAN ONLY  
8 THINK OF A FEW EXAMPLES -- I MEAN THERE'S SOME EXAMPLES WHERE  
9 YOU'VE GOT DOE 1003 WHOSE IDENTITY IS VERY PUBLIC -- DO YOU  
10 MIND IF I SAY IT? I MEAN, IT THAT GOING TO BE A BIG PROBLEM?

11 **THE COURT:** IF THE PERSON HAS BEEN IDENTIFIED AS A  
12 DOE, DON'T SAY WHO IT IS, BUT...

13 **MS. SHORT:** OKAY. IT IS SOMEONE WHO IS -- BUT  
14 MEANWHILE, YOU HAVE A DOCUMENT WHERE THIS DOCUMENT IS SAYING  
15 WE'VE ALSO TALKED TO DOE 1003, MEDICAL DIRECTOR OF THIS CLINIC,  
16 AND DOE 1003, MEDICAL DIRECTOR OF THAT CLINIC. THEY'RE JUST  
17 THIS DOE IDENTIFIER, AND SHE'S NOT THE MEDICAL DIRECTOR OF  
18 EITHER CLINIC. SO IT'S JUST A BLATANT MISTAKE RIGHT THERE. OR  
19 YOU HAVE DOCUMENTS WHERE THEY'RE SAYING WE'RE SO THANKFUL FOR  
20 "REDACTED" AND "REDACTED" FOR TALKING TO THE MEDIA.

21 I MEAN, WHAT IS THE PURPOSE OF THIS? I COULD  
22 UNDERSTAND INITIALLY THE PURPOSE WAS, WELL, THERE ARE PRIVACY  
23 INTERESTS HERE, BUT THEY ARE ABUSING THAT AND USING IT  
24 NEEDLESSLY TO THE DETRIMENT OF PLAINTIFFS -- TO DEFENDANTS. IT  
25 MAKES IT SO MUCH MORE WORK FOR US TO HAVE FIGURE OUT WHO'S WHO,



1 WE'RE GOING TO HAVE TO IDENTIFY WITNESSES, LINK TOGETHER  
2 PEOPLE, YOU KNOW, AND IT'S JUST POINTLESS.

3 **THE COURT:** ALL RIGHT.

4 **MS. BOMSE:** ANYTHING ELSE YOU WANT TO SAY ABOUT THIS?

5 **MS. BOMSE:** NO, YOUR HONOR. YOU KNOW, WE DON'T THINK  
6 IT'S POINTLESS. WE THINK IT'S A SECURITY REASON.

7 **THE COURT:** ALL RIGHT. SO, I'LL -- THIS IS SOMETHING  
8 THAT I HAVEN'T GIVEN ANY THOUGHT SINCE HOWEVER LONG IT WAS AGO  
9 THAT I ISSUED THIS, SO I WILL -- I'LL GO BACK AND TAKE A LOOK  
10 AT THAT ORDER. I'LL THINK ABOUT WHAT YOU SAID.

11 AND AT SOME POINT, THE IDENTITIES OF SOME OF THESE  
12 WITNESSES IS, OBVIOUSLY, GOING TO NEED TO BE DISCLOSED. YOU  
13 WILL BE IDENTIFYING PEOPLE FROM THE DISCOVERY THAT YOU'RE GOING  
14 TO WANT TO TAKE DEPOSITIONS OF, I SUSPECT, AND SO -- SO IT'S A  
15 QUESTION -- IN SOME WAYS IT'S A QUESTION OF TIMING. BUT LET ME  
16 THINK ABOUT THE BEST WAY OF DEALING WITH THIS.

17 **MS. BOMSE:** WELL, IT'S NOT JUST A QUESTION OF TIMING,  
18 BECAUSE MANY OF THESE PEOPLE WILL NEVER BE IDENTIFIED. I MEAN  
19 THEY'RE -- YOU KNOW, THE LIST OF 30, I DON'T THINK COUNSEL HAS  
20 BEEN REPRESENTING TO YOU THAT LIST OF 30 ADDITIONAL PEOPLE ARE  
21 ALL PEOPLE WHO ARE GOING TO BE WITNESSES IN THIS CASE, MANY OF  
22 THEM.

23 **THE COURT:** SOME WILL.

24 **MS. BOMSE:** SURE.

25 **THE COURT:** SO.

1           **MS. BOMSE:** OKAY. IT ALSO SEEMS TO ME THIS MIGHT BE  
2 AN ISSUE THAT YOU COULD -- THAT IS PART OF THE DISCOVERY  
3 PROCESS JUDGE RYU MIGHT --

4           **THE COURT:** IT DOES SEEM TO ME THAT MIGHT BE WHAT I  
5 END UP DECIDING TO DO, BUT I WANT TO TAKE A LOOK AT IT FIRST.

6           **MS. BOMSE:** THANK YOU, YOUR HONOR.

7           **THE COURT:** MS. SHORT, ANYTHING ELSE.

8           **MS. SHORT:** WELL, YES, YOUR HONOR, I WOULD LIKE TO  
9 BRING UP ONE OTHER ISSUE WHICH HAS SORT OF STUCK IN OUR CRAW,  
10 WHICH WAS PLAINTIFF'S CONTENTION IN THE -- IT WAS RELATED TO  
11 THIS PRIVACY ISSUE THAT ABOUT THE THREATS, THE ONGOING THREATS  
12 BECAUSE OF THE ONGOING LITIGATION, AND WE WILL BE DOING  
13 DISCOVERY ON THAT BECAUSE NOW THAT WE HAVE DONE DISCOVERY, WE  
14 CAN ASSURE THE COURT THAT THERE ARE WERE VIRTUALLY NO THREATS  
15 THAT RESULTED FROM THIS -- THESE VIDEOS.

16           WE NOW HAVE THE DISCOVERY, AND SO I JUST -- I --  
17 PLAINTIFFS JUST CASUAL THROWING OUT THAT, OH, EVERY TIME  
18 SOMEBODY PUTS OUT A PRESS RELEASE, NOW THESE PEOPLE RECEIVE  
19 THREATS, IS PATENTLY ABSURD, BECAUSE WE COULD SEE EVEN WHEN THE  
20 VIDEOS FIRST CAME OUT THAT THAT WASN'T HAPPENING.

21           **THE COURT:** OKAY. I SUSPECT THAT I WILL SEE MORE  
22 ABOUT THIS.

23           **MS. SHORT:** OKAY.

24           **THE COURT:** FROM BOTH SIDES IS MY GUESS.

25           **MS. SHORT:** THANK YOU.

1           **THE COURT:** I GUESS THE FINAL THING THAT WAS  
2 MENTIONED IN ONE OF THE STATEMENTS WAS THE PRELIMINARY HEARING.  
3 AND DO YOU KNOW ANYTHING ABOUT TIMING WITH RESPECT TO THAT?

4           **MS. SHORT:** OH, IN THE CRIMINAL MATTER, YOUR HONOR?

5           **THE COURT:** YES.

6           **MS. SHORT:** I WILL REFER TO MR. DALEIDEN'S COUNSEL  
7 FOR THAT.

8           **THE COURT:** IS THAT SOMETHING THAT I NEED TO BE  
9 THINKING ABOUT, I GUESS IS THE QUESTION.

10          **MR. HEFFRON:** YOUR HONOR, MATT HEFFRON ON BEHALF OF  
11 MR. DALEIDEN.

12           THE PRELIMINARY HEARING IS SCHEDULED FOR -- OKAY.

13          **UNIDENTIFIED SPEAKER:** (INDISCERNIBLE.)

14          **MR. HEFFRON:** OKAY. IT'S COMING UP. HERE'S WHAT THE  
15 PROBLEM IS, JUDGE, THAT WHEN THAT TIME COMES SOME OF THE  
16 IMPLICATION OF THIS CASE OF YOUR PRELIMINARY INJUNCTION WILL BE  
17 IMPACTED.

18          **THE COURT:** RIGHT.

19          **MR. HEFFRON:** AND SO I DON'T KNOW EXACTLY WHAT YOUR  
20 QUESTION IS AT THAT POINT, BUT --

21          **THE COURT:** I WAS THINKING ABOUT TIMING, BUT I  
22 ALSO -- I DID WANT TO -- THE ISSUE OF MODIFYING THE PRELIMINARY  
23 INJUNCTION WAS RAISED, I THOUGHT I WOULD REPEAT WHAT I HAD SAID  
24 BEFORE, WHICH I THINK SHOULD WORK -- BUT IF THERE'S A PROBLEM  
25 WE OUGHT TO DEAL WITH IT -- AND THAT IS JUDGE HITE WILL MAKE

1 DETERMINATIONS OF WHAT IS REQUIRED WITH RESPECT TO  
2 MR. DALEIDEN'S DUE PROCESS RIGHTS IN THAT CRIMINAL MATTER, AND  
3 IF HE DECIDES THAT THERE ARE -- THAT MY ORDER NEEDS TO BE  
4 MODIFIED FOR PURPOSES OF THAT CASE IN SOME WAY, HE'LL BE ABLE  
5 TO DO THAT.

6 THAT'S -- BECAUSE THOSE -- I'M NOT GOING TO DO IT  
7 PROPHYLACTICALLY, BUT JUDGE HITE IS GOING TO, I'M SURE, ENSURE  
8 THAT MR. DALEIDEN'S DUE PROCESS RIGHTS ARE PROTECTED.

9 **MR. HEFFRON:** AND YOU'RE TALKING ABOUT SEPARATE  
10 SOVEREIGNS, THAT YOU'RE NOT -- YOU ARE NOT IN ANY WAY  
11 INTERFERING WITH JUDGE HITE'S RULINGS ON --

12 **THE COURT:** RIGHT.

13 **MR. HEFFRON:** -- IN HIS CASE.

14 THERE WAS, JUDGE, EARLIER IN THIS CASE, I KNOW, A  
15 STATEMENT THAT WE SHOULD COME TO THIS COURT IF WE THINK THERE  
16 IS A DIFFICULTY THAT NEEDS TO BE RESOLVED WITH THAT -- WITH THE  
17 STATE CASE. AND I TAKE IT FROM YOUR ORDERS RIGHT NOW, THAT WE  
18 DO NOT NEED TO DO THAT. WE'LL REFER TO JUDGE HITE AND LET HIM  
19 MAKE THAT DECISION.

20 **THE COURT:** YES. DON'T INDEPENDENTLY MAKE THAT  
21 DECISION WITHOUT JUDGE HITE MAKING THE DECISION.

22 **MR. HEFFRON:** JUDGE, I WILL NOT DO THAT.

23 **THE COURT:** THAT MIGHT HAVE HAPPENED BEFORE.

24 **MR. HEFFRON:** (INDISCERNIBLE.)

25 **THE COURT:** BUT JUDGE -- I WILL RESPECT WHATEVER

1 JUDGE HITE DOES. THEY ARE SEPARATE CASES AND THERE'S -- SO I  
2 HOPE I'VE BEEN CLEAR ABOUT THAT.

3 **MR. HEFFRON:** JUDGE, IF NOT, WE CERTAINLY HAVE IT  
4 CLARIFIED RIGHT HERE.

5 CAN I HAVE ONE MOMENT, JUDGE?

6 **THE COURT:** YEAH. YOU KNOW WHERE TO FIND ME IF THERE  
7 IS ANY DOUBT.

8 MS. BOMSE, DO YOU HAVE ANY --

9 **MS. BOMSE:** YOUR HONOR, IF I COULD HAVE ONE MOMENT TO  
10 DISCUSS SOMETHING WITH DEFENSE COUNSEL TO FIGURE OUT IF I HAVE  
11 AN ISSUE TO RAISE WITH YOU?

12 **THE COURT:** OKAY.

13 MS. SHORT, DO YOU HAVE --

14 **MS. SHORT:** REAL QUICK.

15 **THE COURT:** YEAH.

16 **MS. SHORT:** WOULD YOUR HONOR LIKE A JOINT BRIEF ON  
17 THE ISSUE OF THE DOE -- OVERUSE OF THE DOE IDENTIFIERS? WOULD  
18 YOU CARE FOR THAT? I'D BE HAPPY TO PROVIDE --

19 **THE COURT:** NO. YOU KNOW, I'M GOING TO LOOK AT IT.  
20 I'M THINKING THAT IT MIGHT BE -- BECAUSE JUDGE RYU'S BEEN  
21 SEEING ALL OF THIS DISCOVERY, THAT IF -- IF I HAVE PROBLEM, OR  
22 A QUESTION, OR A CONCERN, THAT SHE MIGHT BE THE RIGHT PERSON,  
23 BUT I JUST NEED TO THINK ABOUT IT. AND IF I DO NEED A BRIEF,  
24 I'LL ASK YOU TO DO THAT.

25 **MS. SHORT:** THANK YOU VERY MUCH.

1           **MR. MILLEN:** JUST TO LET YOU KNOW, JUDGE, IF YOU DID  
2 COME OUT THAT WAY, YOU WOULD DEFINITELY NEED TO PUT THAT IN  
3 WRITING, BECAUSE JUDGE RYU SAID: THIS IS WHAT JUDGE ORRICK  
4 DID, THIS IS NOT TOUCHABLE. SO DEFINITELY SHE WOULD NEED SEE  
5 THAT, BECAUSE SHE TALKED ABOUT THAT IN THE HEARING.

6           **THE COURT:** OKAY.

7           **MR. MILLEN:** THIS IS NOT UP FOR DISCUSSION BECAUSE  
8 JUDGE ORRICK SAID IT, WROTE IT.

9           **THE COURT:** THANK YOU, MR. MILLEN.

10          **MS. BOMSE:** OKAY, YOUR HONOR. IT'S THE LAST  
11 HOUSEKEEPING ISSUE, AND WE ADDRESSED THIS IN OUR CMC STATEMENT.

12                 IN THE NAF CASE, AS THE COURT KNOWS, MATERIALS WERE  
13 FILED UNDER SEAL, PARTICULARLY THE PRELIMINARY -- THE MOTION  
14 FOR PRELIMINARY INJUNCTION AND THE OPPOSITION.

15                 WE HAD ASKED COUNSEL FOR NAF -- WELL, WE ASKED NAF'S  
16 COUNSEL FIRST, WHO DID NOT OPPOSE, AND THEN WE ASKED DEFENSE IN  
17 THE NAF CASE, WHETHER THEY WOULD OPPOSE -- OR WHETHER THEY  
18 WOULD STIPULATE TO ALLOWING COUNSEL FOR PLANNED PARENTHOOD TO  
19 HAVE ACCESS TO THOSE SEALED MATERIALS. FOR MATTERS OF  
20 EFFICIENCY, THERE WAS A LOT SAID THAT'S RELEVANT TO THIS CASE.  
21 AND THE COURT'S SEEN THOSE UNSEALED MATERIALS. DEFENSE COUNSEL  
22 HAVE SEEN THEM. WE'RE THE ONLY ONES WHO HAVEN'T SEEN THEM.

23                 THE STICKING POINT WAS AT THE TIME COUNSEL FOR THE  
24 DEFENDANTS IN NAF WERE RELUCTANT TO ALLOW IN-HOUSE COUNSEL AT  
25 PLANNED PARENTHOOD, FEDERATION OF AMERICA, AND MS. PARKER TO

1 SEE THOSE. HOWEVER, SINCE THAT TIME, THIS -- THE ISSUE OF  
2 WHETHER IN-HOUSE COUNSEL, WHO ARE ALSO COUNSEL OF RECORD,  
3 ADMITTED PRO HAC VICE IN THIS COURT, ARE ALLOWED TO LOOK AT THE  
4 VIDEOS, WHICH IS SOMETHING THE DEFENDANTS OPPOSED, HAS BEEN  
5 RULED ON BY JUDGE RYU. AND JUDGE RYU SAID, YES, THOSE COUNSEL  
6 WHO ARE COUNSEL OF RECORD HAVE A REASONABLE -- IT'S REASONABLY  
7 NECESSARY FOR THEM TO REVIEW THOSE MATERIALS.

8 AT THAT POINT IT WAS MY VIEW THAT WE WOULDN'T HAVE AN  
9 ISSUE ANYMORE, AND WE COULD GET A STIPULATION. BUT I HAVE BEEN  
10 WORKING ON THIS FOR SEVERAL WEEKS. I CAN'T SEEM TO GET AN  
11 ISSUE FROM THE NEW COUNSEL FOR MR. DALEIDEN, ALTHOUGH I BELIEVE  
12 THEY WERE ALSO COUNSEL IN THE NAF CASE. NONETHELESS, WHAT I'VE  
13 BEEN TOLD MULTIPLE TIMES IS THEY STILL NEED TO TAKE A LOOK AT  
14 ALL THE SEALED MATERIALS.

15 SO I WAS HOPING NOT TO BRING THIS UP, BUT IT FEELS  
16 LIKE IT'S MY ONE OPPORTUNITY TO SEE THE COURT UNTIL DECEMBER,  
17 AND WE'D LIKE TO GET SOME REALLY SIMPLE RELIEF ON THIS ISSUE.

18 **UNIDENTIFIED SPEAKER:** JUDGE, I JUST TOLD MS. BOMSE  
19 BEFORE WE STEPPED UP HERE IT PROBABLY WOULD BE GOOD IF WE DID  
20 STEP OUT AND TALK ABOUT IT OR DO SOME SORT OF MEET AND CONFER  
21 BECAUSE THIS IS BEING HANDLED BY MY PARTNER, PETER BREEN, WHO  
22 IS NOT HERE TODAY, AND WE'RE KIND OF GOING DIFFERENT  
23 DIRECTIONS.

24 I DON'T KNOW EXACTLY WHAT HIS CONCERNS WERE, BUT I DO  
25 KNOW THAT HE WANTED TO AT LEAST REVIEW THE DOCUMENTS BEFORE

1 THEY GO OUT THE DOOR, AND THAT'S -- IF THAT'S THE ISSUE, THEN I  
2 CAN ASSURE THE COURT THAT WE WILL WORK AS QUICKLY AS WE CAN TO  
3 GET THAT DONE. PARTICULARLY IN LIGHT OF THE FACT THAT THE  
4 JUDGE -- THAT YOU, YOURSELF, HAVE SET CERTAIN DEADLINES HERE,  
5 WE WILL TRY TO EXPEDITE THAT. AND I REALLY DON'T HAVE ANY  
6 OTHER RESPONSE TO THAT. I JUST DON'T KNOW.

7 **THE COURT:** OKAY. ALL RIGHT. I WON'T --

8 **MR. BREEN:** YOUR HONOR?

9 **THE COURT:** -- PUT YOU TO ANSWER -- YES, WHO'S ON THE  
10 PHONE?

11 **MR. BREEN:** YES. THIS IS PETER BREEN --

12 **THE COURT:** OH.

13 **MR. BREEN:** -- YOUR HONOR.

14 **THE COURT:** THE VERY SAME MR. BREEN.

15 **MR. BREEN:** RIGHT. I'M SORRY. I HEARD MY NAME  
16 INVOKED IN VAIN.

17 YES, AND, YOUR HONOR, WE'RE JUST ANALYZING THE TEXT  
18 OF THE STIPULATION AT THIS POINT IN LIGHT OF DOCKET 105 IN THAT  
19 CASE. SO I DON'T SEE A PROBLEM WITH THIS. IT'S MORE THAT THE  
20 STIPULATION WAS EVERY FILING THAT EVER WOULD BE FILED UNDER  
21 SEAL, AS WE UNDERSTOOD IT, AND WE DIDN'T KNOW IF THAT WOULD  
22 FOREVER AND ALL TIME BE SOMETHING WE SHOULD STIPULATE TO, OR AT  
23 LEAST CERTAINLY AT ALL FILINGS UNTIL -- YOU KNOW, UNLESS  
24 CERTAIN CLAIMS GET DISMISSED OR WHAT HAVE YOU. JUST BASED ON  
25 WE FEEL THOSE FILINGS ARE DERIVATIVE OF SOME OF THE THINGS THAT



1 HAVE ALREADY BEEN STIPULATED TO AND ORDERED BY COURT DOCKET  
2 FILE FIVE, BUT WE DON'T HAVE A PROBLEM WITH THAT. WE JUST  
3 WANTED TO CRAFT THE LANGUAGE.

4 **THE COURT:** ALL RIGHT. SO -- SO WOULD YOU BOTH  
5 SUBMIT ME A STIPULATION BY NEXT WEEK.

6 **MS. BOMSE:** ABSOLUTELY.

7 **THE COURT:** AND IF THERE'S A PROBLEM WITH THE  
8 LANGUAGE OR SOME -- IF THERE'S SOME OTHER ISSUE THAT'S  
9 UNRESOLVED, GIVE ME SOME LANGUAGE AND TRACK CHANGES AND EXPLAIN  
10 VERY BRIEFLY WHAT THE CONCERN IS, AND THEN I'LL ORDER IT IF I  
11 NEED TO ORDER IT.

12 **MS. BOMSE:** THANKS, YOUR HONOR.

13 **THE COURT:** OKAY? DOES THAT WORK FOR YOU, MR. BREEN?

14 **MR. BREEN:** YES, YOUR HONOR, THANK YOU.

15 **THE COURT:** GREAT.

16 IS THERE ANYBODY ELSE ON THE PHONE? I'M NOT SURE I  
17 GOT APPEARANCES FROM PEOPLE ON THE PHONE.

18 (SIMULTANEOUS COLLOQUY.)

19 **MR. BREEN:** ...ONLY ONE, YOUR HONOR.

20 **THE COURT:** OKAY. ANYTHING ELSE? ALL RIGHT. THANK  
21 YOU EVERYBODY.

22 (PROCEEDINGS ADJOURNED AT 3:00 P.M.)  
23  
24  
25

CERTIFICATE OF TRANSCRIBER

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
TRANSCRIPT, TO THE BEST OF MY ABILITY, OF THE ABOVE PAGES OF  
THE OFFICIAL ELECTRONIC SOUND RECORDING PROVIDED TO ME BY THE  
U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, OF THE  
PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN THE  
ABOVE MATTER.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR,  
RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN  
WHICH THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT  
FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE  
ACTION.



JOAN MARIE COLUMBINI

JULY 20, 2018